

HOUSE BILL 1839

By Durham

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 7; Title 12 and Title 65, relative to the
provision of internet service.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 7-52-601, is amended by deleting the section and substituting instead the following:

(a)

(1) Each municipality operating an electric plant described in § 7-52-401 has the power and is authorized within its service area, under this part, and on behalf of its municipality acting through the authorization of the governing board to acquire, construct, own, improve, operate, lease, maintain, sell, mortgage, pledge, or otherwise dispose of any system, plant, or equipment for the provision of cable service, two-way video transmission, video programming, Internet services, or any other like system, plant, or equipment within or without the corporate or county limits of such municipality, and, with the consent of such other municipality, within the corporate or county limits of any other municipality.

(2) A municipality may obtain permission to offer Internet access service to unserved or underserved customers outside its service area by petitioning for consent as set forth in subsection (f).

(3) A municipality may only provide cable service, two-way video transmission, video programming, Internet services, or other like service through its governing board.

(4) A municipality providing any of the services authorized by this section shall not dispose of all or substantially all of the system, plant, and equipment used to provide the services, except upon compliance with the procedures set forth in § 7-52-132.

(5) As used in this part, "governing board" means the board or supervisory body having responsibility for the municipal electric plant.

(b) The services permitted by this part do not include telephone, telegraph, and telecommunications services permitted under part 4 of this chapter.

(c) Notwithstanding subsection (a), a municipality shall not have any power or authority under subsection (a) in any area where a privately held cable television operator is providing cable service over a cable system and in total serves six thousand (6,000) or fewer subscribers over one (1) or more cable systems.

(d) Notwithstanding subsection (a), a municipality shall not have any power or authority under subsection (a) in any area of any existing telephone cooperative that has been providing cable service for not less than ten (10) years under the authority of the federal communications commission.

(e)

(1) Notwithstanding this section, the comptroller of the treasury shall select, not later than August 1, 2003, a municipal electric system providing services in accordance with this part to provide, as a pilot project, the services permitted under this section beyond its service area but not beyond the boundaries of the county in which such municipal electric system is principally located; provided, that:

(A) The municipal electric system receives a resolution from the legislative body of the county regarding service in unincorporated areas of the county, or any other municipality within such county regarding service

within such municipality, requesting the municipal electric system to provide such services to its residents; and

(B) The municipal electric system obtains the consent of each electric cooperative or other municipal electric system in whose territory the municipal electric system will provide such services.

(2) The comptroller shall expand the pilot project established in subdivision (e)(1) to include one (1) municipal electric system located in the eastern grand division of the state that proposes to provide services in accordance with this part. Not later than August 1, 2004, the comptroller shall select the municipal electric system pilot project pursuant to this subdivision (e)(2), subject to the requirements of subdivision (e)(1).

(3) The comptroller shall report to the general assembly, not later than January 31, 2008, with recommendations regarding whether the pilot projects permitted by this part should be continued or expanded to other systems. The comptroller shall evaluate the efficiency and profitability of the pilot project services of the municipal electric system in making such recommendation; provided, that the comptroller shall not so evaluate a pilot project system that is not providing service in competition with another cable service provider.

(4) There shall be no other municipal electric system selected to provide pilot project services until the comptroller issues the recommendation required by subdivision (e)(3).

(f) A municipality that is providing broadband Internet service within its service area pursuant to this section may file a petition with the Tennessee regulatory authority, seeking to provide broadband Internet service to unserved or underserved customers outside its service area. The Tennessee regulatory authority shall grant the petition, and

allow the municipality to provide broadband Internet service to unserved or underserved customers outside its service area, if the authority determines that:

(1) No provider of Internet service offers service in the affected area capable of providing an asymmetrical connection to the Internet from a computer with an expected download data transfer rate of at least twenty-five megabits per second (25 Mbps) and an expected upload data transfer rate of at least three megabits per second (3 Mbps);

(2) The area affected has not been identified by the federal communications commission as eligible for Connect America Fund support;

(3) The petitioning municipality is in compliance with §§ 7-52-603 and 7-52-606, and the petitioning municipality agrees to finance the extension of services in compliance with §§ 7-52-603 and 7-52-606; and

(4) The municipality agrees to charge a rate for the Internet service that is not below the cost of providing the service. In determining the municipality's cost of providing Internet service:

(A) The benefits of shared use of buildings, equipment, vehicles, and personnel with other municipal departments shall be included, as well as imputing:

(i) The cost of the capital component that is equivalent to the cost of capital that would be available to private communications service providers if those providers offered broadband Internet access service in the same location; and

(ii) An amount equal to all taxes and fees, including property taxes, licenses, fees, and other assessments that would apply to a private communications service provider, including

federal, state, and local taxes; rights-of-way, franchise, consent, or administrative fees; and pole attachment fees; and

(B) The municipality may amortize the capital assets of the communications system over the useful life of the assets in accordance with generally accepted accounting principals.

(g) The Tennessee regulatory authority may establish a filing fee to cover the costs of administering the petitions described in subsection (f), may adopt rules and reporting requirements to carry out its functions pursuant to this section, and may adopt rules establishing procedures for complaints against municipalities alleging anticompetitive practices.

(h) Any permission to expand beyond the service area that may be granted pursuant to subsection (f) shall be limited to providing only broadband Internet service and shall not include cable service, two-way video transmission, or video programming. For purposes of this subsection (h), "broadband Internet service" means any service that provides an asymmetrical connection to the Internet from a computer with an expected download data transfer rate of at least twenty-five megabits per second (25 Mbps) and an expected upload data transfer rate of at least three megabits per second (3 Mbps).

(i) Nothing in this section gives the Tennessee regulatory authority or any other department of state government the authority to regulate the rates, terms, and conditions of Internet service.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.